INDEX

	PAGE
Opinions Below	1, 6
Jurisdiction	2
Questions Presented	2
Statute Involved	3
The Proceedings	4
The Decision Below	6
Reasons for Granting the Petition	8-13

CITATIONS.

Cases: PAGE

Belgenland, The, 114 U. S. 355 ..... 13, 14
Bennett v. *Connelly*, 122 Misc. (N. Y.) 149, affd. 208 App. Div. (N. Y.) 852 11
Cain v. *Alpha S.S. Corp.*, 1929 A. M. C. 1484, 35 F. 2d 717 (2 C. C. A.) 14
Canada Malting Company v. *Patterson Co.*, 285 U. S. 413 5
Clark v. *Montezuma Transportation Company, Ltd.*, 217 A. D. (N. Y.) 172 ..... 11, 14
Cortes v. *Bull Insular Line*, 287 U. S. 367 9
Cunard v. *Mellon*, 262 U. S. 100, 1923 A. M. C. 552 14
Dickinson v. *Petroleum Conversion Corporation*, 338 U. S. 507 12
Gambera v. *Bergoty*, 132 F. 2d 414 (C. C. A., 2nd Cir.) Opinion on rehearing 1943 A. M. C. 47 (not reported elsewhere) cert. den. 319 U. S. 742 ..... 10, 12
Gonzalez v. *J. Lauritzen*, 1940 A. M. C. 220 (not reported elsewhere) 20
Grand Trunk Ry. Co. v. *Wright*, 21 F. 2d 814 (6 C. C. A.) 1928 A. M. C. 290 14
Hanna Nielsen, The, 273 Fed. 171 (C. C. A., 2nd Cir.) cert. den. 257 U. S. 652, *sub nom Hannah Nielson* 13, 14
Hogan v. *Hamburg-American Line*, 152 Misc. (N. Y.) 405, cert. den. 295 U. S. 749 10
Ivaran, The, 35 F. Supp. 229 20
Jackson v. *SS Archimedes*, 275 U. S. 463 ..... 15, 19
Komaridis v. *Compania Internacional de Vapores, Ltda.*, 1943 A. M. C. 1437 (not reported elsewhere) 20
Kyriakos v. *Goulandris*, 151 F. 2d 132 ..... 3, 6, 7, 17
New York Central Railroad v. *Chisholm*, 268 U. S. 29 8

PAGE

O'Neill v. *Cunard White Star Line*, 160 F. 2d 446 ..... 5, 11, 12

Panama Railroad v. *Johnson*, 289 Fed. 964, affd. 264 U. S. 375 ..... 4, 11

Patterson v. *Bark Eudora*, 190 U. S. 169 15

Paula, The, 91 F. 2d 1001 (C. C. A. 2nd), cert. den. 302 U. S. 750 ..... 10, 12

Plamals v. *Pinar del Rio*, 277 U. S. 151 ..... 8, 14

Rainey v. *N. Y. & P. S. S. Co.*, 216 Fed. 449, 454 9 C. C. A.) 14

Radovic v. *The Princ Pavle*, 45 F. Supp. 15 20

Scotland, The, 105 U. S. 24 14

Sonnessen v. *Panama Transport Company*, 298 N. Y. 262 ..... 5, 7, 10

Strathearn Steamship Co. v. *Dillon*, 252 U. S. 348 16

Taylor v. *Atlantic Maritime Co., et al.*
179 F. 2d 597 ..... 1, 3, 6, 18
86 F. Supp. 496 ..... 2, 3, 6
181 F. 2d 84 6

Thompson Towing & Wrecking Association v. *McGregor*, 207 Fed. 209 (6 CCA) 14

Uravic v. *Jarka Company*, 282 U. S. 234 8

United States v. *Rodgers*, 150 U. S. 249 14

Wenzler v. *Robin Line*, 277 Fed. 812 11

STATUTES INVOLVED.

28 U. S. C., §1254(1), §2101(c) 2

Federal Employers' Liability Act, 45 U. S. C. §§51-60 4

Railroad Law, 45 U. S. C. §59 6

46 U. S. C. §597 16

46 U. S. C. §599, 46 U. S. C. §599(a), 46 U. S. C. §599(e) 15, 16

Jones Act, §33 of the Act of June 5, 1920, 46 U. S. C. §688 ..... 2, 3, 4, 6, 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No.

ATLANTIC MARITIME COMPANY and S. LIVANOS & COMPANY, INC.,

Petitioners,

against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, Deceased.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above entitled case on December 19, 1950 (32).*

THE OPINIONS BELOW.

The opinion of the Court of Appeals (23-28), is reported at 179 F. 2d 597, sub nom. *Taylor* vs. *Atlantic Maritime Co., et al.*

---

* References are to pages of the Record.

The opinion of the District Court (14-17), is reported at 86 F. Supp. 496, sub nom. *Taylor* vs. *Atlantic Maritime Co.*

Jurisdiction.

Judgment of the Court of Appeals was entered and filed on December 19, 1950 (32). The jurisdiction of this court is invoked under 28 U. S. C., §1254 (1), and §2101 (c).

Questions Presented.

1. Does the so-called Jones Act, Section 33 of the Act of June 5, 1920 (46 U. S. C., §688), which makes applicable to seamen the provisions of the Federal Employers' Liability Act, govern liability for personal injuries where the employee and his employer are both aliens, and the negligence alleged against the employer occurred upon a vessel owned exclusively by a Panamanian corporation and flying the flag of Panama, while the said vessel was on the high seas and wholly outside the jurisdiction of the United States?

2. In the absence of clearly expressed Congressional intent, should an American statute, enacted for the benefit of American seamen on American ships, be held applicable to injuries received by an alien seaman on a foreign ship on the high seas, merely because of the fact that the alien seaman joined the foreign ship in an American port?

3. Under such circumstances, will the American law supplant and take away from the seaman his rights under the law of the ship's flag?

4. Does the Jones Act apply to injuries on a foreign vessel to a foreign seaman?

The district court held that the Act did not apply. 86 F. Supp. 496 (14-17). The Circuit Court held that it did, solely because the seaman had signed his contract (shipping articles) in the United States. 179 F. 2d 597 (23-28). However, two of the three judges of the court were of the opinion that the Act did not apply. Their decision to hold it applicable was induced by their belief that they were bound by the rationale of a prior decision of the same court in *Kyriakos* v. *Goulandris*, 151 F. 2d 132, with which they did not agree. There was a dissent in the *Kyriakos* case.

Statute Involved.

The Jones Act, Section 33 of the Act of June 5, 1920 (46 United States Code, §688), reads as follows:

> "§688. Recovery for injury to or death of seaman.
>
> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. Mar. 4, 1915, c. 153, §20, 38 Stat. 1185: June 5, 1920, c. 250, §33, 41 Stat. 1007."

The statutes applying to railway employees, referred to above, are the Federal Employers' Liability Act, 45 U. S. C. §§51-60.

This court has held that no other federal statutes are incorporated in the Jones Act. *Panama Railroad v. Johnson*, 264 U. S. 375.

The Proceedings.

Lindville Taylor commenced a civil action in the United States District Court for the Southern District of New York, alleging he was a Panamanian national and that both defendants were Panamanian corporations and that he was in the employ of the defendants on board their Steamship *Atlantic Air* as a result of signing shipping articles on August 7, 1947 at Norfolk, Virginia (3-4). He alleged that in March, 1948, he became ill because of the negligence of the defendants, and he invoked the jurisdiction of the district court by predicating his action upon a federal statute, to wit: The Jones Act, Title 46 U. S. C. §688 (4-5). He also invoked the "General Maritime Law of the United States" (5).

In a second cause of action, he alleged that after he became ill, he was not given proper care and treatment on board the vessel nor was he sent to a doctor but, on the contrary, was compelled to work so that his disease was aggravated and developed into tuberculosis (5-6).

In a third cause of action, he asked for maintenance and cure under the "General Maritime Law of the United States" (6).

The defendants,* appearing specially, moved that the court decline jurisdiction of the action, on the ground that

* The parties will be referred to as they were below.

the plaintiff had a full remedy under the laws of Panama where he had his permanent residence and where the defendants were incorporated (8-13).

Since the action was at law and between aliens, there was, obviously, no jurisdiction on the law side, unless the Jones Act governed. However, civil actions are frequently transferred to the admiralty side of the court, *O'Neill* vs. *Cunard White Star Line*, 160 F. 2d 446, and the motion to decline jurisdiction was grounded on the theory that the Jones Act did not apply and that, with the Jones Act out of the case, the admiralty court had a discretion to decline jurisdiction, insofar as the action was based on the general maritime law. *Canada Malting Company* v. *Patterson Co.*, 285 U. S. 413.

The district court noted that from the pleadings and from the testimony given by the seaman in a prior suit on the same cause of action, there was no doubt that the plaintiff was a citizen and resident of the Republic of Panama and that both defendants were Panamanian corporations (14-17). It also found that the plaintiff conceded that his illness arose while the vessel was on the high seas (16). Accordingly, it ruled that the Jones Act had no application (16). For this it cited a case in the highest court of the State of New York, which was on all fours, *Sonnessen* v. *Panama Transport Company*, 298 N. Y. 262, and a previous decision of the United States Court of Appeals for the Second Circuit, *O'Neill* v. *Cunard White Star, Ltd.*, 160 F. 2d 446 (17).

The district court also ruled that the general maritime law of the United States was not applicable, but that the law of Panama was (17). Under these circumstances, it granted the motion to decline to entertain jurisdiction and

relegated the plaintiff to the appropriate forum in Panama (14-17), 86 F. Supp. 496.

This was tantamount to a summary dismissal of the complaint, as the Court of Appeals later held (23).

The plaintiff appealed, but, while the appeal was pending, he died (28). The Court of Appeals for the Second Circuit reversed the lower court and remanded the case for further proceedings conditioned upon the substitutiton of an administrator for the deceased plaintiff (28). Under the Jones Act, and the Railroad law, the Seaman's cause of action survived, 46 U. S. C. §688; 45 U. S. C. §59. This substitution was not accomplished until December, 1950 (30, 31) For that reason, the judgment of the Court of Appeals was not entered until December 19, 1950 (32).

The Court of Appeals affirmed the lower court's discretionary denial of jurisdiction under the general maritime law (23-24) but reversed the holding of the district judge that the Jones Act did not apply (24-28).

The Court of Appeals declined to certify the question to this court but its sole reason was that it would not interfere with this court's control of its calendars, *Taylor* vs. *Atlantic Maritime Co.*, 181 F. 2d 84.

The Decision Below.

The Court of Appeals ruled that the Jones Act applied because the articles had been signed at a United States port (24-28), 179 F. 2d 597.

Two of the judges, Learned Hand and Thomas W. Swan, stated that they felt themselves bound by the rationale of a previous decision of the same court in *Kyriakos* v. *Goulandris*, 151 F. 2d 132, with which they disagreed (27-

28). Free from the constraint of that prior decision, they would have decided that the Jones Act had no application and would have followed the decision to that effect in the case of *Sonnessen* v. *Panama Transport Company*, 298 N. Y. 262. The *Sonnessen* case was on all fours with the *Taylor* case and was decided by the highest court of New York State. This court had denied certiorari in the *Sonnessen* case, 337 U. S. 919.

In fact, the actual decision in the *Kyriakos* case is not a precedent for the decision in the case at bar. There the seaman's contract had been made in the United States but it also appeared that the accident itself had taken place in the United States.

The dissent in the *Kyriakos* case, written by Judge Learned Hand, states that none of the judges had any idea that the Jones Act applied to accidents on foreign vessels while they were on the high seas. 151 F. 2d 132, at page 139. Yet that is what has been held in the case at bar.

Even if it be conceded for the purpose of argument that the *Kyriakos* case controlled the case at bar, the result is that, of the five judges who participated in those two decisions, three (Augustus N. Hand, Jerome L. Frank and Charles E. Clark) are of the opinion that the Jones Act applies under the circumstances of the case at bar, whereas, two judges (Learned Hand and Thomas W. Swan) believe that the Jones Act does not apply. The two minority judges are in accord with the opinion of the highest court of New York State, *Sonnessen* v. *Panama Transport Company*, 298 N. Y. 262, a case on all fours with the case at bar.

REASONS FOR GRANTING THE PETITION.

1. The questions presented here have never been passed upon by this court. They should be.

In *Uravic* v. *Jarka Company*, 282 U. S. 234, a longshoreman was killed on a German vessel while it was lying in an American port. His administrator sued his employer under the Jones Act. This court held the Jones Act applied on the ground that the legislation was presumptively territorial and that, inasmuch as the accident had happened in an American port, the American statutory law controlled. The German registry and German ownership of the vessel was held not controlling in a suit by the American longshoreman against his American employer.

2. The decision in the case at bar is not in harmony with the territorial doctrine announced in the *Uravic* case.

In the *Uravic* case, this court noticed the problem which would have been posed if the accident had been caused to a member of the crew of the German ship and he, as an alien, had sued his alien employer under the Jones Act. It expressly left the question open. 282 U. S. 234 at page 241.

The same question had been left open in *Plamals* v. *Pinar del Rio*, 277 U. S. 151, at page 155.

In *New York Central Railroad* v. *Chisholm*, 268 U. S. 29, a railroad employee, who had been hired in the United States, went with his train to Canada. While there, he suffered an injury which resulted in his death. His widow sued in the United States under the Federal Employers' Liability Act. This court held that the Act had no application. It said that the tort was governed exclusively by

the law of the place where the tort occurred, viz., Canada, and that the legislation of Congress, governing the relationship of railroad employers and employees, had no application.

It is the Federal Employers' Liability Act (which is made applicable to seamen by the Jones Act) on which this present suit is based.

The Court of Appeals, in the case at bar, thought (26) that the *Chisholm* decision had been impaired by the reasoning of this court in the later case of *Cortes* v. *Bull Insular Line*, 287 U. S. 367. However, the *Cortes* case went no further than to hold that standards of negligence under the Jones Act were not controlled by decisions as to what constituted negligence under the Federal Employers' Liability Act. The *Cortes* case did not, in any way impair the doctrine announced in the *Chisholm* case that the statute law was confined in its application to torts occurring within the United States.

3. The case at bar is out of harmony with the *Chisholm* case.

There have been various decisions by lower courts involving questions as to the applicability of the Jones Act to seamen on foreign vessels. This is the first case, however, in which the Jones Act has been held applicable to a foreign seaman and foreign employer for injury on a foreign vessel where the accident occurred on the high seas and not in an American port.

In the following cases, alien seamen sued their alien employers under the Jones Act for injuries received on foreign vessels. In some of them, the seamen signed on in American ports and were injured in an American port and, in others, the seamen signed on in the United States but

were injured abroad. In some cases, the Jones Act was held applicable and, in others, not applicable. In all cases, this court denied certiorari. A synopsis of these cases follows:

The Paula, 91 F. 2d 1001 (C. C. A. 2nd), cert. den. 302 U. S. 750. An alien seaman employed by an alien signed articles at a foreign port for a voyage to the United States. His injury took place while the vessel was in a United States port. The Court of Appeals for the Second Circuit held that the Jones Act did not apply.

Hogan v. *Hamburg-American Line*, 152 Misc. (N. Y.) 405, cert. den. 295 U. S. 749. An alien, who had been long resident in the United States and had been shipping out of American ports for some years, signed on a German vessel in the port of New York for a foreign voyage. He was injured while his vessel was on the high seas. The state court held that the Jones Act did not apply.

Gambera v. *Bergoty*, 132 F. 2d 414 (C. C. A., 2nd Circuit), opinion on rehearing 1943 A. M. C. 47 (not reported elsewhere) cert. den. 319 U. S. 742. An alien seaman, who had resided for some years in the United States and usually shipped out of American ports as a seaman, signed on a Greek vessel at an American port for a voyage to another American port. He was injured while his vessel was in American territorial waters. It was held that the Jones Act applied.

Sonnesen v. *Panama Transport Company*, 298 N. Y. 262, cert. den. 337 U. S. 919. An alien seaman was employed in an American port by a Panamanian corporation and signed articles on a foreign vessel for a foreign voyage and return to the United States. He became ill while his vessel was on

the high seas. The highest court of New York State held that the Jones Act did not apply.

O'Neill v. *Cunard Steamship Company*, 160 F. 2d 446, Court of Appeals, 2nd Circuit, cert. den. 332 U. S. 773. An alien seaman who had been living in the United States for some years and had been shipping from its ports for some years, signed articles in England on a British vessel for a British employer, for a voyage from England to Canada. While his vessel was on the high seas, he was washed overboard. His widow sued his employer under the Jones Act. It was established that the widow herself had resided in the United States for a number of years, and the children of the deceased had been born here and were thus American citizens. The court held that the Jones Act did not apply.

Lower New York state courts have disagreed with the federal courts, also, in cases where the alien seaman is injured in an American port while aboard a foreign vessel which he has joined in an American port. In such circumstances, the New York state courts hold that the Jones Act is not applicable. *Clark* v. *Montezuma Transportation Company Ltd.*, 217 A. D. (N. Y.) 172. They say the foreign law of the ship's flag follows it around the world, just as American law does on American ships. *Panama R. Co.* v. *Johnson*, 289 Fed. 964, affd. 264 U. S. 375; *Wenzler* v. *Robin Line*, 277 Fed. 812; *Bennett* v. *Connelly*, 122 Misc. (N. Y.) 149, affd. 208 App. Div. (N. Y.) 852.

4. These decisions have produced a confusing situation.

5. So far as the present facts are concerned, the highest court of New York State, in the *Sonnessen* case, has an-

nounced a rule which is diametrically contrary to the rule announced in the present case by the federal court.

6. The United States Court of Appeals for the Second Circuit, which decided the present case, is divided among its judges as to the correctness of its own decision.

A diversity of opinion among the judges in a federal circuit court has heretofore moved this court to grant certiorari. *Dickinson* v. *Petroleum Conversion Corporation*, 338 U. S. 507.

Previous decisions on the Jones Act by the Court of Appeals for the Second Circuit have revealed an uncertain basis of decision.

In some cases, the result seems to have been influenced by labelling the alien seaman as an "American seaman" because the seaman involved had long been residing in the United States. Thus, when such an "American seaman" was injured in local territorial waters, he was permitted to sue under the Jones Act. *Gambera* v. *Bergoty*, 132 F. 2d 414. Opinion on rehearing 1943 A. M. C. 47 (not reported elsewhere).

On the other hand, an alien seaman who, by reason of his and his family's long residence in the United States, had a better claim to the title "American seaman", was held not entitled to sue under the Jones Act because his contract was made outside the United States and the accident occurred on the high seas. *O'Neill* v. *Cunard*, 160 F. 2d 446.

And, yet, the fact that an accident happened in a United States port was held not to be controlling in the case of *The Paula*, 91 F. 2d 1001. In that case, the alien seaman was held not to be entitled to the benefit of the Jones Act, because he had signed his articles abroad.

Thus it appears that, in these three cases, the place of the contract has been the only consistently appearing jurisdictional fact. However, it was not the determining factor when the decisions were made. In fact, Judge Learned Hand and Judge Swan, in the present case, have clearly stated that it still should not be the controlling factor.

As long ago as 1921, the same Circuit Court of Appeals said in *The Hanna Nielsen*, 273 Fed. 171, at page 172 (C.C.A. 2nd Circuit), cert. den. 257 U. S. 652 sub. nom. *Hannah Nielson*.

> "If the claim advanced herein be regarded as in contract, the breach being the shipowner's failure properly and reasonably to provide for the safety of libelant, Norwegian law, and that alone, governs the right of recovery; for 'whoever engages voluntarily to serve on board a foreign ship necessarily undertakes to be bound by the law of the country to which the ship belongs.' *The Belgenland*, 114 U. S. 355, 5 Sup. Ct. 860, 29 L. Ed. 152. The seaman's contract in this instance was a Norwegian contract, and so remained throughout. The place where libelant shipped or reshipped is of no moment whatever • • •."

7. The decision in the present case is contrary to the well established rule that the law of the ship's flag controls in tort relations between the crew and their employers for accidents occurring aboard the vessel, no matter where the ship is and regardless of where the contract has been made. Particularly is that true when the vessel is on the high seas.

In *The Belgenland*, 114 U. S. 355, it was stated categorically that the law of the flag prevails in all matters that relate to a maritime contract. In the following cases, the law of the flag was held to control in all matters relating to the "internal economy" or discipline of the ship:

The Scotland, 105 U. S. 24;
The Belgenland, 114 U. S. 355;
United States v. *Rodgers*, 150 U. S. 249;
Cunard v. *Mellon*, 262 U. S. 100, 1923 A. M. C., 552;
Thompson Towing & Wrecking Association v. *McGregor*, 207 Fed. 209, 217-219 (6 C. C. A.);
Rainey v. *New York & P. S.S. Co.*, 216 Fed. 449, 454 (9 C. C. A.);
The Hanna Nielsen, 273 Fed. 171 (2 C. C. A.);
Grand Trunk Ry. Co. v. *Wright*, 21 F. 2d 814 (6 C. C. A.), 1928 A. M. C. 290;
Cain v. *Alpha S. S. Corp.*, 1929 A. M. C. 1484, 35 F. 2d 717 (2 C. C. A.);
Clark vs. *Montezuma Transp. Co.*, 217 App. Div. (N. Y.) 172.

All seamen, whatever their nationality, are taken to be nationals of the country whose flag their vessel flies. *Rainey* v. *N. Y. & P. S.S. Co.*, 216 Fed. 449 at p. 454.

In *Plamals* v. *SS Pinar Del Rio*, 16 F. 2d 984, the court said:

> "That libelant is a Spaniard is immaterial; the case is the same as if he had been an Englishman. *The Hanna Nielsen* (C. C. A.) 273 Fed. 171, citing *The Belgenland*, 114 U. S. 355."

The present case has gone to an extreme in making an exception to the "rule of the flag." It has decided that because the contract was made in the United States, the statutory law of the place of the contract, viz., the Jones Act, governs the relationship of the parties for torts committed on the high seas and, presumably, anywhere in the world, even in the port of Panama where the vessel was

registered and where both the seaman and his employer were resident, and of which country they were nationals. This result was said to have been in the mind of Congress in passing the Jones Act. The supposed intention of Congress was discerned by the court in the prior *Kyriakos* case, 151 F. 2d 132, because of two decisions of this court construing other sections of 46 U. S. Code which dealt with entirely different features.

In the first of those cases, *Patterson* v. *Bark Eudora*, 190 U. S. 169, Congress had provided, 46 U. S. C. §599, that wages could not be paid to any seaman in advance of the time he had earned them. One of the sections of this Code, §599 (e), read as follows:

> "This section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, * * *."

This court held that Congress had the constitutional power to outlaw such payments when made in United States ports, even with respect to foreign vessels and foreign seamen.

The Jones Act (46 U. S. C., §688), which is involved in the case at bar, does not contain any provision making it specifically applicable to foreign shipowners and vessels which sign crews in United States ports. In the absence of such an express provision in the Act, the presumption would be that Congress did not intend that the Jones Act should govern torts committed on the high seas and in all ports all over the world merely because the contracts of shipment had been made in United States ports.

The same section (46 U. S. C. §599) as was involved in *Patterson* v. *Bark Eudora* was before this court in a later case. *Jackson* v. *S.S. Archimedes*, 275 U. S. 463. There,

the advances had been made in a foreign port and, when the seamen arrived in the United States, they sought to prevent their employer from taking credit for the advances on the ground that the advances were condemned by the American statute. The seamen pointed to a clause in the Act which said that payment of such wages should be no defense to a suit by a seaman "* * * whether (such advances were) made within or without the United States or territory subject to the jurisdiction thereof * * *." 46 U. S. C., §599 (a). This court, however, held that the legislation was presumptively territorial and did not apply to advance wages paid outside the United States. The court said that the words of the statute relied on by the seamen applied to advances in foreign ports, only when made to seamen on American vessels.

In its opinions in the *Kyriakos* and *Taylor* cases, the Court of Appeals did not mention the case of *Jackson* v. *The Archimedes*, and, seemingly, was unaware of it. The *Jackson* case demonstrates that Congress has had no intention of controlling acts occurring outside territorial United States waters aboard foreign vessels, even though it has the power to do so, either because the seaman's contract is made here or because the vessel happens to come here.

The other case relied upon by the United States Court of Appeals in the *Kyriakos* and *Taylor* cases, was *Strathearn Steamship Co.* v. *Dillon*, 252 U. S. 348. That case involved a statute of the United States which permits a seaman to demand half his earned wages at ports where the vessel loads or discharges cargo. 46 U. S. C., §597. If the shipowner fails to honor the seaman's demand, the seaman is entitled to leave the ship and obtain the full

wages which are due him to the date of his leaving. A clause in the statute provides:

> "* * * This section shall apply to seaman on foreign vessels while in harbors of the United States and the courts of the United States shall be open to such seamen for its enforcement."

In the *Strathearn* case, it was held that seamen on foreign vessels, arriving at United States ports, were entitled to demand and receive half of their wages under this statute even though it was contrary to their shipping contracts which had been made abroad.

Again, it should be pointed out that there is nothing in any part of the Act involved in the case at bar, viz., the Jones Act, expressly making it applicable to contracts signed here by alien seamen for work on foreign vessels.

It was thought by the majority of the Court of Appeals in the *Kyriakos* case that the *Patterson* and *Strathearn* cases furnished a precedent for holding that it was the intention of Congress likewise to impose the Jones Act upon all contracts by foreign vessels engaging seamen made in the United States, and that Congress intended that the Jones Act should apply in such circumstances when the injury took place in a port of the United States. *Kyriakos* v. *Goulandris*, 151 F. 2d 132.

Judge Learned Hand dissented in that case. He said, page 139:

> "* * * We cannot fix the liabilities of foreign owners to foreign seamen for injuries occurring at sea, or in other ports than our own; at least, nobody suggests that the Jones Act does so. All we shall accomplish is to hold that, whenever a foreign seaman happens to be injured in one of our ports, he may recover whenever an American seaman might recover. * * *"

However, when Judge Learned Hand later wrote the opinion of the court in the case at bar (*Taylor* v. *Atlantic Maritime*), he stated that the *Kyriakos* decision had, by its rationale, compelled the conclusion that Congress had intended to fix the liabilities of foreign owners and foreign seamen for injuries occurring at sea and at other ports than our own, simply because the seaman's contract had been made in the United States.

Judge Hand said in the *Taylor* case, 179 F. 2d 597 at page 600 (27):

> "• • • To Judge SWAN and me it seems, on the other hand, that, before we impute to Congress the will to change the long settled international understanding that the law of the flag controls in such matters, we should find a more definite expression of that purpose. We of course recognize that it is only a question of interpreting the statute, not of power; *Patterson* vs. *Bark Eudora*, 190 U. S. 169; *Strathearn S.S. Co.* v. *Dillon*, 252 U. S. 348, but the possible consequences of the innovation seem to us to forbid its ready assumption under the facile phrase of the 'policy of the Act'. Nor does the possible disadvantage, at which our view might put American seamen, seem to us considerable enough to imply such a purpose, for there will be, we should suppose, only rare occasions when American seamen will find themselves forced to accept the greatly inferior standards of wages and living which prevail on most, if not all, foreign ships. Moreover, we both find strong support for our view in the decision of the Court of Appeals in *Sonnesen* vs. *Panama Transport Company*, 298 N. Y. 262, which is on all fours with the case at bar. Nevertheless, in spite of what we should hold, were we free, we think that, although *Kyriakos* vs. *Goulandris*, 2 Cir., 151 F. 2d 132, can be distinguished because the injury took place on

shore, the rationale of the opinion went further; and that it construed the Jones Act as imposing its terms upon all owners who sign on crews in an American port."

Thus, the Circuit Court, by over-emphasis of the place of contract as a criterion of the statute's application, has pushed its application to foreign vessels on the high seas and in every harbor of the world. This court, in *Jackson* v. *Archimedes*, 275 U. S. 463, could have pushed the application of the statute involved therein to similar lengths if it had seen fit to overemphasize the significance of the fact that the foreign vessel had finally come to the United States and was, therefore, subject to our laws. But this court, wisely, saw what havoc such a decision would create and left it to Congress, thereafter, to declare its intention expressly. Congress has never done so.

Judges Hand and Swan are similarly aware of the difficulties lurking in the problem. But, apparently, none of the judges of the Court of Appeals are aware that in *Jackson* v. *Archimedes* this court had pointed the way to the correct decision of the case at bar.

The decision below necessarily means that a foreign vessel calling here with an entire crew signed on abroad which has to replace one of its members with a local seaman, whether alien or American, will thereafter be responsible to the one seaman, under the Jones Act, no matter where in the world the vessel goes. With respect to the remainder of the crew, the shipowner will continue to be subject to the law of his flag. It is certain that Congress never intended to produce this incongruity.

We should not lightly impute to Congress the intention to regulate the relations between foreign shipowners and

their alien crews for accidents happening outside American jurisdiction.

The decision below seriously interferes with the laws made by foreign nations to govern the relationship between employers and crews on vessels while away from their home ports. Nearly all maritime nations have special laws which apply to the crews of their vessels and which protect them in case of injury. The Republic of Panama, of which both parties to this litigation were nationals, has a statutory plan for compensating its injured and ill seamen. This came to the attention of a court in *Komaridis* v. *Compania Internacional de Vapores, Ltda.*, 1943 A. M. C. 1437 (not otherwise reported). Great Britain has had a compensation law applicable to seamen since 1906 (6 Edward VII, Chapter 58); France has had such a law since 1898 (see Loi du 9 Avril, 1898; Loi du 29 Decembre, 1905); Italy since 1904; Germany since 1902; and Belgium since 1929. Seamen's rights under the compensation laws of Denmark and Norway have come to the attention of our courts, *Gonzalez* v. *J. Lauritzen*, 1940 A. M. C. 220 (not reported elsewhere); *The Ivaran*, 35 F. Supp. 229. Yugoslavia has a similar law; *Radovic* v. *The Princ Pavle*, 45 F. Supp. 15.

If foreign shipowners are to be subjected to the provisions of American statutory law for injuries occurring while in their home ports or while on the high seas or in other foreign ports, merely because they sign crews on in the United States, then the systems of laws which have been established by foreign nations for dealing with compensation problems, will be completely unworkable. Often, the seamen themselves make contribution to these compensation funds.

Furthermore, if the United States undertakes generally to interfere with the operation of foreign laws, as the Court

of Appeals has sanctioned in the present case, foreign nations will be led ultimately to do likewise, and American shipowners will be subjected to foreign law when seamen on their vessels make contracts in foreign ports and jurisdiction is later obtained over the shipowner therein.

If Congress wishes such a result, then there should be no difficulty on its part in saying so. In the absence of such explicit congressional provision, there is serious reason to doubt that Congress ever intended it.

The questions involved should receive the authoritative attention of this court.

WHEREFORE your petitioners respectfully pray that a writ of certiorari issue to review the decision below.

ATLANTIC MARITIME COMPANY
S. LIVANOS & COMPANY, INC.

By CLETUS KEATING
VERNON S. JONES
Counsel for Petitioners.

Dated: New York, February 5, 1951.